

ELECTIONS COMMISSION
Special Meeting Minutes
October 30, 2012

ROLL CALL

PRESENT: Chair Smith, Vice-Chair Cosgrove, Commissioners Edgeworth, Louie and Pierre-Dixon

ABSENT: None

STAFF: City Clerk Dennis Hawkins, Deputy City Attorney Sandra Lee, Independent Investigator/Evaluator Joan Cassman, Deputy City Clerk Tamara Davis, and Deputy City Clerk Cecilia McDaniel

ORDER OF BUSINESS

I. CALL TO ORDER

The members of the San Jose Elections Commission convened at 5:43 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

II. ADOPTION OF AGENDA

Upon motion by Commissioner Pierre-Dixon, and seconded by Commissioner Louie the Commission approved the adoption of the October 30, 2012 Agenda with the dropping of Item VII.B. (Vote 5-0)

III. PUBLIC COMMENT

None.

VII. ITEMS SCHEDULED FOR ACTION

- A. Hearing on the complaint filed by Martin Monica on October 16, 2012 alleging violations of San José Municipal Code Title 12 by Jimmy Nguyen, candidate for Council District 8, and the independent "Committee for Safe San Jose Neighborhoods- Support Nguyen for City Council" (Independent Investigator/Evaluator)

Document Filed: Memorandum from Hanson Bridgett LLP to the San Jose Elections Commission dated October 30, 2012 regarding Citizen Complaint by Martin Monica

alleging Campaign Contribution – Improper Coordination by Council Candidate Jimmy Nguyen.

The Complainant Martin Monica; Representative for Respondent Jimmy Nguyen, Richard Robinson; Independent Investigator/Evaluator Joan Cassman from Hanson Bridgett LLP were present.

The Commission Chair reviewed the hearing procedures for the members of the public.

The Independent Investigator/Evaluator, Joan Cassman, explained the nature of the complaint and what elements are needed for the complaint to be viable. Ms. Cassman stated that there were not sufficient facts or allegations that if proven to be true would constitute a violation of Title 12. Ms. Cassman stated to show improper coordination three elements must be present: (1) a specific expenditure that is troubling or is of concern, (2) activity or conduct or coordination that occurs prior to the specific expenditure, and (3) allegation of coordination. The complaint is missing any allegation that there is a specific expenditure that is of concern, and any allegation of coordination. Although Mr. Hillis was employed by the POA and then began working for the Jimmy Nguyen Campaign, there was a distinction in time. The Independent Investigator/Evaluator stated that there was a clear distinction in time between the two jobs. The activities took place in two different months. The Law states that there needs to be consultation and coordination before the expenditure takes place.

Independent Investigator/Evaluator Cassman informed the Commission that Hanson Bridgett's attempt to contact Mr. Hillis was unsuccessful. Hanson Bridgett contacted the POA and was informed that Mr. Hillis was no longer associated with the POA. The Investigator/Evaluator stated that there were not sufficient facts or allegations that constitute a violation of Title 12, so it was determined there were no grounds to conduct an investigation.

The Respondent's representative, Richard Robinson, declined to speak.

The Complainant Martin Monica claimed there was improper coordination because Mr. Hillis worked with and discussed items with Mr. Unland the President of the POA. Mr. Monica claimed that the POA is hampering the investigation because they know how to reach Mr. Hillis, and will not turn the information over to the Investigator/Evaluator. Mr. Monica urged the Investigator/Evaluator to reconsider their recommendation and proceed with a thorough investigation.

The Investigator/Evaluator clarified that they didn't ask the POA how to contact Mr. Hillis; they asked if Mr. Hillis was associated with the POA. The Independent Investigator/Evaluator noted that they did not ask for further contact information for Mr. Hillis.

Recommendation: The Independent Investigator/Evaluator stated that the allegations were not proven with the documents that were filed with the complaint, so there was

no cause to conduct an investigation, nor were there sufficient facts to sustain a potential violation of the Municipal Code for which the Commission has jurisdiction to act. The Independent Investigator/Evaluator recommends adoption of the opinion as set forth in the report, approving the recommendation against conducting an investigation of the Complaint and closing the file in this matter without further action.

Action: Upon motion by Vice-Chair Cosgrove and seconded by Commissioner Edgeworth the Commission approved the recommendation by the Independent Investigator/Evaluator and accepted the report. (Vote 5-0)


Action: Upon motion by Commissioner Pierre-Dixon and seconded by Commissioner Louie the City Clerk and City Attorney were directed to draft a resolution for the Commission Chair to sign. (Vote 5-0)

- B. Discussion and action to grant subpoena power to the Evaluator/Investigator to exercise in consultation with the Commission Chair. (Independent Investigator/Evaluator)

Action: The Commission dropped this Item.

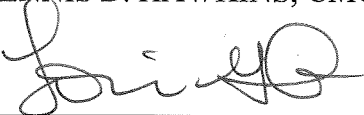
X. ADJOURNMENT

The meeting adjourned at 6:26 pm



MICHAEL SMITH, CHAIR

ATTEST:
ELECTIONS COMMISSION
DENNIS D. HAWKINS, CMC SECRETARY



Dennis D. Hawkins, CMC

for